



## AGENDA REPORT

### SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: August 20, 2019

Agenda Item 6BB

**Approvals:**

City Manager [Signature]  
Dept. Head [Signature]  
Attorney [Signature]  
Finance [Signature]

**Department:** City Manager and City Attorney  
**Prepared By:** James Makshanoff, City Manager  
Scott C. Smith, City Attorney

**Subject:** ***AMICUS BRIEF IN SUPPORT OF PETITION TO THE U.S. SUPREME COURT TO GRANT REVIEW OF THE NINTH CIRCUIT'S DECISION IN MARTIN V. CITY OF BOISE***

**Fiscal Impact:** This effort will involve preparation of an amicus brief comprised of arguments already framed in defense of the *Housing Is A Human Right* litigation against the City and its co-defendants, with costs shared by the co-defendants. It is estimated that the City's share of those costs will be approximately \$10,000.00

**Background:** The Ninth Circuit decision in *Martin v. City of Boise* (9th Cir. 2018) 902 F.3d 1031 severely limits the ability of municipalities to prohibit public camping. In May 2018, the City updated and modernized its municipal code to conform to that decision. However, the decision leaves open several important questions that create legal and fiscal uncertainty for the City in its enforcement of its anti-camping ordinances. The City of Boise has requested amicus support in the form of a friend of the court brief as it seeks the U.S. Supreme Court's review of the *Martin* decision.

**Discussion:** *Martin v. Boise* invalidated an anti-camping ordinance on Constitutional grounds, creating a division of authority with other circuits. The City of Boise will soon file a petition with the U.S. Supreme Court seeking review of the decision. Boise is seeking friend of the court support from municipalities across the nation and has reached out to San Clemente based upon the unique and significant impacts of the decision on San Clemente. Specifically, *Martin* leaves open the following key issues for San Clemente:

- [1] What does it mean for shelter to be "available"? For example, *where* does it need to be available? What kind of accommodations are required? Can it be outdoors? Are shelters that are limited to one gender available to individuals whose spouse is excluded from them? If no shelter is available to an individual because he has been evicted from a shelter for violating rules of conduct, is that individual exempt from enforcement?
- [2] How should availability be measured? How can local governments measure the number of homeless, which changes constantly? Also, can governments impose durational residency requirements, or must they provide shelter to as many homeless individuals as choose to come to the jurisdiction? How can governments measure the number of available beds (especially given the

difficulty in assessing which beds are “available” for which homeless individuals)? And what is the required relationship between the number of homeless individuals and the number of available beds—can ordinances be enforced as long as there is one excess bed, or is something more required?

- [3] Which laws are affected by this rule? For example, must sufficient shelter be provided before a government can enforce restrictions on camping or erecting structures, blocking sidewalks, sleeping in public parks, lighting fires on public property, etc?

This action will authorize the City's special defense counsel to draft and file an amicus brief on behalf of the City and its co-defendants in cooperation with Boise's legal team and other amicus teams around the country.

**Environmental**

**Review:** Not applicable.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:

Direct the City Attorney to authorize Special Counsel's preparation and filing of an amicus curiae brief in support of Boise's petition to the U.S. Supreme Court to grant review of the Ninth Circuit's decision in the matter of *Martin v. Boise*.

**Notification:** None